It was contended that members of the public should never be at risk of suffering injury without having compensation even in cases where no fault can be found: further it was contended that, in contrast to earlier days, there are now obligations compulsorily to insure. But apart from the circumstance that there are limitations in regard to the obligation to insure these are considerations of policy for a legislature. The decision in *Phillips'* case has at all times been judicially accepted without any adverse comment. In his speech in *Cutler's* case Lord Simonds linked the decisions in *Groves v. Wimborne* and *Monk v. Warbey:* Lord du Pacq as already pointed out showed that questions often arose as to whether a case fell within *Groves v. Wimborne* or within *Phillips v. Britannia Hygienic Laundry Co. Ltd.* The law as laid down in *Phillips'* case was well known and well established when the regulations now being considered were made. The decision was a part of what Lord Simonds in his speech in *Cutler's* case referred to as "the pre-existing law". There are no indications that any new legislative provision was at any time designed to effect any change in the law.

For these reasons their Lordships will report to the Head of Malaysia their opinion that the appeal fails and ought to be dismissed with costs.

Appeal dismissed.

Solicitor: *Lipton & Jeceries; Berrymans.*

KHOO TAM SENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Abdul Aziz J.) June 10, 1969]

[K.L. — Criminal Appeal No. 9 of 1969]

Criminal Law and Procedure — Sentence — Forfeiture — Whether mandatory under the Excise Enactment (Cap. 133) — Order of forfeiture in addition to fine held excessive.

Excise Enactment (Cap. 133) ss. 43(i), 61 & 67.

The appellant in this case was charged under the Excise Enactment for having in possession 8.5 gallons of fermented toddy in a lorry. The accused pleaded guilty. The trial magistrate imposed a sentence of $200 or 1 month imprisonment. He also made an order of forfeiture of the lorry in which the toddy was conveyed on the ground that the order of forfeiture was mandatory.

The accused appealed against the order of forfeiture.

Held: allowing the appeal, (1) under the Excise Enactment an order of forfeiture was not mandatory but merely discretionary;

(2) having regard to the quantity of the toddy conveyed and the fine imposed by the magistrate the order of forfeiture of the lorry or part of the sentence was manifestly excessive and must be quashed.

MAGISTRATE'S CRIMINAL APPEAL.

Syed Hassan Aljeffri for the appellant.

Ahmad bin Abdul (Deputy Public Prosecutor) for the respondent.

Abdul Aziz J. (delivering oral judgment): This is an appeal against the decision of an order of forfeiture of motor vehicle No. BG 2947 made by the Telok Datok magistrate in respect of a criminal charge under the Excise Enactment. The charge reads:—

"That you, Khoo Tam Seng, at about 12.15 p.m. on 20.11.68 at 13th milestone, Klang-Banting Road, in the State of Selangor, not being a person authorised under section 43(i) of the Excise Enactment, Cap. 133 did have in your possession fermented toddy to wit one glass bell jar, one plastic jerry can and one aluminium kettle containing 8.5 gallons of toddy and you have thereby committed an offence under section 43(i) and punishable under section 67 of the Excise Enactment, Cap. 133."

To this charge, the accused pleaded guilty; and on his own plea of guilty, he was fined $200 or 1 month's imprisonment and the lorry, which was used to carry the 8.5 gallons of toddy, was ordered to be confiscated.

It seems to me that the learned magistrate had misinterpreted sections 61(i) and 67 of the Excise Enactment (Cap. 133) when he said that the order of forfeiture was mandatory. Section 61(i) reads:—

"All goods or articles in respect of which there may have been, ... committed any offence against this or any other written law relating to the Excise ..... together with any still, utensil ..... receptacle ..... or *conveyance* in which the same may have been found ..... may be seized, and all such goods and other articles so seized shall if an offence has been committed, be liable to forfeiture ....."

Section 67 reads:—

"..... every act done ..... contrary to, the provisions of this Enactment ..... shall be deemed to be an offence against this Enactment, and for every such offence ..... shall, in addition to the forfeiture of any articles seized, be liable ..... to a fine of five hundred dollars ....."

It is clear from the above that these sections, if properly analysed and interpreted, do not make an order of forfeitue mandatory but merely discretionary.

Having regard to the quantity of the toddy conveyed and the fine imposed by the magistrate, the order of forfeiture as part of the sentence was manifestly excessive. Consequently, the appeal would be allowed to the extent that the order of forfeiture be quashed.

Appeal allowed.

Solicitors: *Aljeffri & Co.*